IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 3828 of 2005

Between:

M/s. Venkata Sai Traders, 7/61, Park Road, Nandyal - 518 501. Rep. by its Proprietor, Mr. M. Vinay Kumar.

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer, Intelligence,

Chittoor Circle, Chittoor.
2 The Deputy Commercial Tax Officer-II, Nandyal

Circle, Nandyal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or order or direction declaring the action of the 1st

Respondent in detaining the goods of 50 bags of Copra worth Rs. 85, 750/- covered by LR No. 467254 consigned through M/s. Boppanan Road Lines through his detention order dated 3-2-2005 as illegal, arbitrary and without authority of law and contrary tot he provisions of the Act and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.BHASKAR REDDY VEMIREDDY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX

The Court made the following :

<u>O R D E R (Per TCSR,J)</u>

This writ petition is filed to declare the action of the respondents in

detaining the goods of the petitioner, namely, 50 bags of copra worth Rs.85,750/- covered by Lr.No.467254, as illegal, arbitrary and without any authority of law.

2. Petitioner is a registered dealer carrying on wholesale business in general goods and registered dealer under the Andhra Pradesh General Sales Tax Act, 1957. During the course of business, the petitioner is said to have purchased commodities in question namely, Copra on 31.1.2005 from Sri Andawar Traders, Kangayam, Tamilnadu covered by bill No.6 dated 31.1.2005. The grievance of the petitioner is that when the goods are in transit through M/s Boppana Road Lines, covered by a valid Lr.No.467254, the 1st respondent intercepted the vehicle and detained the consignment by an order dated 3.2.2005. At the same time, the 1st respondent also is said to have seized the sale bill delivery note and L.R. issued by the seller in the State of Tamil Nadu.

3 . The learned counsel for the petitioner represented that the petitioner paid the tax on the commodities purchased in Tamil Nadu as per the provisions of law prevailing in that State and the 1st respondent has no authority to detain the goods for the purpose of levying the tax under the provisions of A.P.G.S.T. Act

4 . We have heard the learned counsel for the petitioner and the learned Standing Counsel for Commercial Taxes and perused the file pertaining to the detention of the goods.

5. The learned Standing Counsel for Commercial Taxes represents that a show cause notice was issued to the petitioner calling upon him to explain as to why the tax and penalty shall not be levied on the

market value of the goods, inasmuch as it is a case of suppressed correct value of the goods in the State of A.P.

6. In view of the competing claims, we are not inclined to go into the merits of the matter. Inasmuch as a show cause notice has already been issued, enquiry in regard thereto shall go on. But in the meanwhile the commodity in question shall not be allowed to remain forever in the custody of the authorities, since it is semi-perishable. In that view of the matter, it is appropriate to pass orders working out the equities, so that the enquiry can legitimately be gone into by the authorities for determination of the actual issue in controversy.

7. The equities can be worked out by directing the petitioner and at the same while directing the authorities to release the goods in favour of the petitioner on payment of tax of Rs.3,254/- as claimed in the show cause notice. With that direction, the writ petition can be disposed of at the threshold.

8. In the result the instant writ petition is allowed and the 1st respondent is directed to release the goods in favour of the petitioner on the condition of the petitioner paying the tax of Rs.3,254/-. The respondents can conduct enquiry in accordance with law and pass appropriate orders in accordance with law.

9. In the circumstances, there shall be no order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS

DATE:09.03.2005

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

TO.

1 The Assistant Commercial Tax Officer, Intelligence, Chittoor Circle, Chittoor.

2 The Deputy Commercial Tax Officer-II, Nandyal Circle, Nandyal.

3. Two C.CS. to G.P. for Commercial Taxes, High court of A.P. Buildings (OUT).

4. 2 C.D. copies.